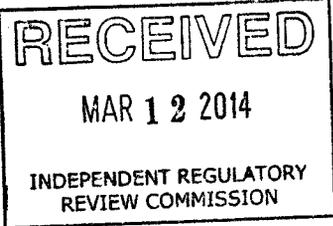


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pennsylvania environmental council



Comments of
John Walliser, Vice President, Legal & Government Affairs
Pennsylvania Environmental Council
to the Environmental Quality Board
January 22, 2014

Good evening. My name is John Walliser, and I am the Vice President for Legal & Government Affairs with the Pennsylvania Environmental Council. We appreciate the opportunity to provide brief comments on the Department of Environmental Protection's proposed amendments to Chapter 78; please note that we will be providing more comprehensive written comments as well.

We are nearly two years removed from passage of Act 13; a law that has since been partially invalidated by the Pennsylvania Supreme Court, directly affecting elements of this regulatory proposal. PEC recognizes the extensive challenge set before the Department in fulfilling new protections afforded by the law while also meditating on the Court's decision.

Nonetheless, we are far better off with promulgation of the expanded protections contained in this rulemaking than to further delay action. We urge the Department, after carefully considering public input, and with due regard to the Supreme Court's decision with respect to the import of the Environmental Rights Amendment, to finalize this proposal.

Without question, the Department will need to promptly revisit its regulations when the Courts conclude their adjudication of the law. But we should not sacrifice critical improvements that have been under review now for almost two years.

With that said, I'd like to offer a few quick observations on the proposed rulemaking.

- We commend the Department for taking the initiative with respect to pre-hydraulic fracturing assessment under Sections 78.52a and 78.73 of the proposal. PEC identified preexisting wells and subsurface hazards as a key issue in our 2010 policy report on shale gas development. We believe these provisions should be strengthened to expand the scope of the operators' analysis of potential fluid conduits in the impacted strata, and to require operators to verify avoidance or mitigation of identified hazards prior to hydraulic fracturing.

- While we support the principle that use of mine influenced water can offset freshwater consumption when performed pursuant to proper safeguards, we believe Section 78.59b – which permits storage of mine influenced water in designated freshwater impoundments – fails that protection standard. At a minimum, the safeguards for storage of mine influenced water should equal those required for wastewater.
- We recognize the Department may consider allowing temporary storage of brines or produced water to facilitate recycling in future hydraulic fracturing. If so, storage should only occur at permitted and bonded well sites with robust leak detection, secondary containment, capacity and time limit measures.
- For Water Management Plans (Section 78.69) in the Ohio River Basin, we urge the Department to follow the lead of the Susquehanna River Basin Commission's Low Flow Protection Policy to reduce adverse impacts to aquatic resources through better siting and timing of withdrawals. We understand the Department is considering use of data collected in partnership with The Nature Conservancy to accomplish this purpose, and we strongly support that initiative.
- The protection of Public Resources was directly addressed by the Supreme Court decision, and we believe Sections 78.15(f) and (g) should be redrafted. We maintain, as we have expressly advocated in the past, that the Department should expand upon the list of, and analysis required for, identified Public Resources, and that there should be a presumption of permit conditions or denial where analysis determines probable impact. These standards should be mandatory for both conventional and unconventional operators.
- As part of a broader examination of Act 13 and its implementation after the decision of the Supreme Court, we again question basing the distinction between conventional and unconventional operations – and the application of differing protection standards – solely on a depth of extraction. The risks of hydraulic fracturing are arguably greater in shallow formations. While the Department may not have liberty at the moment to revisit this distinction in protection standards, we should be prepared for such reassessment pending resolution – whether legislative or judicial – of the law.

Thank you for your consideration this evening.